

Assembly Bill No. 549

CHAPTER 523

An act to amend Sections 42461, 42463, 42474, and 42476 of, to add Section 42461.5 to, and to repeal and add Section 42479 of, the Public Resources Code, relating to recycling.

[Approved by Governor September 25, 2012. Filed with
Secretary of State September 25, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 549, Carter. Recycling: electronic waste.

(1) Existing law, the Electronic Waste Recycling Act of 2003 (act), requires a retailer selling a covered electronic device in this state to collect a covered electronic waste recycling fee from the consumer, as specified. These fees are deposited in the Electronic Waste Recovery and Recycling Account, and the Department of Resources Recycling and Recovery (department) is continuously appropriated the money in the account to, among other things, make electronic waste recovery payments and recycling payments. The department is authorized to make these payments only if certain conditions are met. Existing law requires the act to be enforced pursuant to the hazardous waste control laws, a violation of which, including the making of a false statement or representation in a document, is a crime.

This bill would additionally require, as a condition of making these payments, that the covered electronic waste is demonstrated to have been generated by a person who used the covered electronic device while located in this state. The bill would specify that covered electronic waste generated outside of the state and subsequently brought into the state is not eligible for payment and would require the department to establish documentation requirements necessary to demonstrate that covered electronic waste was generated in the state and eligible for payment. Since a false statement or representation in that document would be a crime, the bill would impose a state-mandated local program.

(2) The act requires the department, for covered electronic waste collected for recycling on and after January 1, 2005, to make those electronic waste recycling and recovery payments for the collection and recycling of covered electronic waste to an authorized collector or covered electronic waste recycler, respectively, upon receipt of a completed and verified invoice submitted to the department by the authorized collector or recycler in the form and manner determined by the department.

This bill would instead require the department to make those electronic waste recycling and recovery payments for the collection and recycling of covered e-waste to an authorized collector or covered e-waste recycler, respectively, upon completion of the department's review of a payment

claim, submitted to the department in the form and manner determined by the department. The bill would also authorize the department to conduct a selective audit of authorized collectors, covered e-waste recyclers, or manufacturers receiving payments from the department to determine whether electronic waste recovery or recycling payments or payments to manufacturers are being made by the department according to the requirements of the act and the regulations adopted pursuant to that act.

(3) Existing law requires a person challenging certain actions of the department to first exhaust all administrative remedies by filing with the department an administrative appeal no later than 30 calendar days from the date of the department's action, in accordance with the regulations adopted to implement the act.

This bill would require the hearing to be held before the Director of Resources Recycling and Recovery or his or her designee, who would be required to issue a written decision stating the factual and legal basis for this decision.

The bill would also make conforming changes with reference to the department.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 42461 of the Public Resources Code is amended to read:

42461. The Legislature finds and declares all of the following:

(a) The purpose of this chapter is to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of covered electronic devices, and to provide incentives to design electronic devices that are less toxic, more recyclable, and that use recycled materials.

(b) It is the further purpose of this chapter to enact a law that establishes a program that is cost free and convenient for consumers and the public to return, recycle, and ensure the safe and environmentally sound disposal of covered electronic devices.

(c) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of covered electronic devices is the responsibility of the producers and consumers of covered electronic devices, and not local government or their service providers, state government, or taxpayers.

(d) In order to reduce the likelihood of illegal disposal of these hazardous materials, it is the intent of this chapter to ensure that any cost associated with the proper management of covered electronic devices be internalized

by the producers and consumers of covered electronic devices at or before the point of purchase, and not at the point of discard.

(e) Manufacturers of covered electronic devices, in working to achieve the goals and objectives of this chapter, should have the flexibility to partner with each other and with those public sector entities and business enterprises that currently provide collection and processing services to develop and promote a safe and effective covered electronic device recycling system for California.

(f) The producers of electronic products, components, and devices should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in those products.

(g) Electronic products, components, and devices, to the greatest extent feasible, should be designed for extended life, repair, and reuse.

(h) The purpose of the Electronic Waste Recycling Act of 2003 is to provide sufficient funding for the safe, cost-free, and convenient collection and recycling of 100 percent of the covered electronic waste initially discarded in the state, to eliminate electronic waste stockpiles and legacy devices by December 31, 2007, to end the illegal disposal of covered electronic devices, to establish manufacturer responsibility for reporting to the board on the manufacturer's efforts to phase out hazardous materials in electronic devices and increase the use of recycled materials, and to ensure that electronic devices sold in the state do not violate the regulations adopted by the Department of Toxic Substances Control pursuant to Section 25214.10 of the Health and Safety Code.

SEC. 2. Section 42461.5 is added to the Public Resources Code, to read:

42461.5. (a) The Legislature finds and declares that the changes made by this act of the 2011–12 Regular Session of the Legislature to subdivision (h) of Section 42461, subdivision (f) of Section 42476, and subdivision (a) of Section 42479, clarify and strengthen the enforcement provisions of the act, so as to implement the Legislature's intent when this chapter was first enacted on January 1, 2003.

(b) The changes specified in subdivision (a) shall not be interpreted as affecting an administrative or legal enforcement action that was filed before, or is pending on, January 1, 2013, and shall not prevent the taking of a legal or administrative enforcement action that may be brought on or after January 1, 2013, with regard to any actions taken, or claims filed, before that date.

SEC. 3. Section 42463 of the Public Resources Code is amended to read:

42463. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Account" means the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund under Section 42476.

(b) "Authorized collector" means any of the following:

- (1) A city, county, or district that collects covered electronic devices.
- (2) A person or entity that is required or authorized by a city, county, or district to collect covered electronic devices pursuant to the terms of a contract, license, permit, or other written authorization.

(3) A nonprofit organization that collects or accepts covered electronic devices.

(4) A manufacturer or agent of the manufacturer that collects, consolidates, and transports covered electronic devices for recycling from consumers, businesses, institutions, and other generators.

(5) An entity that collects, handles, consolidates, and transports covered electronic devices and has filed applicable notifications with the department pursuant to Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(c) “Consumer” means a person who purchases a new or refurbished covered electronic device in a transaction that is a retail sale or in a transaction to which a use tax applies pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(d) Notwithstanding Section 40118, “department” means the Department of Toxic Substances Control.

(e) (1) Except as provided in paragraph (2), “covered electronic device” means a video display device containing a screen greater than four inches, measured diagonally, that is identified in the regulations adopted by the department pursuant to subdivision (b) of Section 25214.10.1 of the Health and Safety Code.

(2) “Covered electronic device” does not include any of the following:

(A) A video display device that is a part of a motor vehicle, as defined in Section 415 of the Vehicle Code, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

(B) A video display device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment.

(C) A video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air-conditioner, dehumidifier, or air purifier.

(D) An electronic device, on and after the date that it ceases to be a covered electronic device under subdivision (e) of Section 25214.10.1 of the Health and Safety Code.

(f) “Covered electronic waste” or “covered e-waste” means a covered electronic device that is discarded.

(g) “Covered electronic waste recycling fee” or “covered e-waste recycling fee” means the fee imposed pursuant to Article 3 (commencing with Section 42464).

(h) “Covered electronic waste recycler” or “covered e-waste recycler” means any of the following:

(1) A person who engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of reuse or recycling.

(2) A person who changes the physical or chemical composition of a covered electronic device, in accordance with the requirements of Chapter

6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and the regulations adopted pursuant to that chapter, by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for purposes of segregating components, for purposes of recovering or recycling those components, and who arranges for the transport of those components to an end user.

(3) A manufacturer who meets any conditions established by this chapter and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code for the collection or recycling of covered electronic waste.

(i) “Discarded” has the same meaning as defined in subdivision (b) of Section 25124 of the Health and Safety Code.

(j) “Electronic waste recovery payment” means an amount established and paid by the Department of Resources Recycling and Recovery pursuant to Section 42477.

(k) “Electronic waste recycling payment” means an amount established and paid by the Department of Resources Recycling and Recovery pursuant to Section 42478.

(l) “Hazardous material” has the same meaning as defined in Section 25501 of the Health and Safety Code.

(m) “Manufacturer” means either of the following:

(1) A person who manufactures a covered electronic device sold in this state.

(2) A person who sells a covered electronic device in this state under that person’s brand name.

(n) “Person” means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. Notwithstanding Section 40170, “person” also includes a city, county, city and county, district, commission, the state or a department, agency, or political subdivision thereof, an interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(o) “Recycling” has the same meaning as defined in subdivision (a) of Section 25121.1 of the Health and Safety Code.

(p) “Refurbished,” when used to describe a covered electronic device, means a device that the manufacturer has tested and returned to a condition that meets factory specifications for the device, has repackaged, and has labeled as refurbished.

(q) “Retailer” means a person who makes a retail sale of a new or refurbished covered electronic device. “Retailer” includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or the Internet, or any other similar electronic means.

(r) (1) “Retail sale” has the same meaning as defined under Section 6007 of the Revenue and Taxation Code.

(2) “Retail sale” does not include the sale of a covered electronic device that is temporarily stored or used in California for the sole purpose of preparing the covered electronic device for use thereafter solely outside the state, and that is subsequently transported outside the state and thereafter used solely outside the state.

(s) “Vendor” means a person that makes a sale of a covered electronic device for the purpose of resale to a retailer who is the lessor of the covered electronic device to a consumer under a lease that is a continuing sale and purchase pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(t) “Video display device” means an electronic device with an output surface that displays, or is capable of displaying, moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display, in that it cannot be easily removed from the display by the consumer, that produces the moving image on the screen. A video display device may use, but is not limited to, a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology.

SEC. 4. Section 42474 of the Public Resources Code is amended to read:

42474. (a) Civil liability in an amount of up to two thousand five hundred dollars (\$2,500) per offense may be administratively imposed by the Department of Resources Recycling and Recovery for each sale of a covered electronic device for which a covered electronic waste recycling fee has not been paid pursuant to Section 42464.

(b) A civil penalty in an amount of up to five thousand dollars (\$5,000) per offense may be imposed by a superior court for each sale of a covered electronic device for which a covered electronic waste recycling fee has not been paid pursuant to Section 42464.

(c) Civil liability in an amount of up to twenty-five thousand dollars (\$25,000) may be administratively imposed by the board against manufacturers for failure to comply with this chapter, except as otherwise provided in subdivision (a).

(d) Civil liability in an amount of up to twenty-five thousand dollars (\$25,000) per violation may be administratively imposed by the Department of Resources Recycling and Recovery against a person, including an authorized collector or covered electronic waste recycler, that makes a false statement or representation in any document filed, submitted, maintained, or used for purposes of compliance with this chapter and associated regulations.

(e) (1) The Department of Resources Recycling and Recovery may revoke the approval or deny the renewal application of an authorized collector or covered electronic waste recycler that makes a false statement or representation in a document filed, submitted, maintained, or used for purposes of compliance with this chapter and the regulations adopted pursuant to this chapter.

(2) In addition to the authority specified in paragraph (1), the Department of Resources Recycling and Recovery may deny an application for approval or renewal from an authorized collector or covered electronic waste recycler that, or an individual identified in the application who, has a history demonstrating a pattern of operation in conflict with the requirements of this chapter and the regulations adopted pursuant to this chapter.

(3) (A) A person challenging a revocation, denial of application renewal, or application denial under this chapter, or an approved covered electronic waste recycler challenging the denial or adjustment of an electronic waste recovery payment or electronic waste recycling payment, shall first exhaust all administrative remedies by filing with the Department of Resources Recycling and Recovery a timely administrative appeal, in accordance with the regulations adopted to implement this chapter.

(B) The hearing shall be held before the Director of Resources Recycling and Recovery or his or her designee, who shall issue a written decision stating the factual and legal basis for this decision.

SEC. 5. Section 42476 of the Public Resources Code is amended to read:

42476. (a) The Electronic Waste Recovery and Recycling Account is hereby established in the Integrated Waste Management Fund. All fees collected pursuant to this chapter shall be deposited in the account. Notwithstanding Section 13340 of the Government Code, the funds in the account are hereby continuously appropriated, without regard to fiscal year, for the following purposes:

(1) To pay refunds of the covered electronic waste recycling fee imposed under Section 42464.

(2) To make electronic waste recovery payments to an authorized collector of covered electronic waste pursuant to Section 42479.

(3) To make electronic waste recycling payments to covered electronic waste recyclers pursuant to Section 42479.

(4) To make payments to manufacturers pursuant to subdivision (h).

(b) (1) The money in the account may be expended for the following purposes only upon appropriation by the Legislature in the annual Budget Act:

(A) For the administration of this chapter by the Department of Resources Recycling and Recovery and the department.

(B) To reimburse the State Board of Equalization for its administrative costs of registering, collecting, making refunds, and auditing retailers and consumers in connection with the covered electronic waste recycling fee imposed under Section 42464.

(C) To provide funding to the department to implement and enforce Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, as that chapter relates to covered electronic devices, and any regulations adopted by the department pursuant to that chapter.

(D) To establish the public information program specified in subdivision (d).

(2) Any fines or penalties collected pursuant to this chapter shall be deposited in the Electronic Waste Penalty Subaccount, which is hereby

established in the account. The funds in the Electronic Waste Penalty Subaccount may be expended by the Department of Resources Recycling and Recovery or the department only upon appropriation by the Legislature.

(c) Notwithstanding Section 16475 of the Government Code, any interest earned upon funds in the Electronic Waste Recovery and Recycling Account shall be deposited in that account for expenditure pursuant to this chapter.

(d) Not more than 1 percent of the funds annually deposited in the Electronic Waste Recovery and Recycling Account shall be expended for the purposes of establishing the public information program to educate the public in the hazards of improper covered electronic device storage and disposal and on the opportunities to recycle covered electronic devices.

(e) The Department of Resources Recycling and Recovery shall adopt regulations specifying cancellation methods for the recovery, processing, or recycling of covered electronic waste.

(f) The Department of Resources Recycling and Recovery may pay an electronic waste recycling payment or electronic waste recovery payment only for covered electronic waste that meets all of the following conditions:

(1) (A) The covered electronic waste is demonstrated to have been generated by a person who used the covered electronic device while located in this state.

(B) Covered electronic waste generated outside of the state and subsequently brought into the state is not eligible for payment.

(C) The Department of Resources Recycling and Recovery shall establish documentation requirements for purposes of this paragraph that are necessary to demonstrate that the covered electronic waste was generated in the state and eligible for payment.

(2) The covered electronic waste, including any residuals from the processing of the waste, is handled in compliance with all applicable statutes and regulations.

(3) The manufacturer or the authorized collector or recycler of the electronic waste provides a cost-free and convenient opportunity to recycle electronic waste, in accordance with the legislative intent specified in subdivision (b) of Section 42461.

(4) If the covered electronic waste is processed, the covered electronic waste is processed in this state according to the cancellation method authorized by the Department of Resources Recycling and Recovery.

(g) The Legislature hereby declares that the state is a market participant in the business of the recycling of covered electronic waste for all of the following reasons:

(1) The fee is collected from the state's consumers for covered electronic devices sold for use in the state.

(2) The purpose of the fee and subsequent payments is to prevent damage to the public health and the environment from waste generated in the state.

(3) The recycling system funded by the fee ensures that economically viable and sustainable markets are developed and supported for recovered materials and components in order to conserve resources and maximize business and employment opportunities within the state.

(h) (1) The Department of Resources Recycling and Recovery may make a payment to a manufacturer that takes back a covered electronic device from a consumer in this state for purposes of recycling the device at a processing facility. The amount of the payment made by the Department of Resources Recycling and Recovery shall equal the value of the covered electronic waste recycling fee paid for that device. To qualify for a payment pursuant to this subdivision, the manufacturer shall demonstrate both of the following to the Department of Resources Recycling and Recovery:

(A) The covered electronic device for which payment is claimed was used in this state.

(B) The covered electronic waste for which a payment is claimed, including any residuals from the processing of the waste, has been, and will be, handled in compliance with all applicable statutes and regulations.

(2) A covered electronic device for which a payment is made under this subdivision is not eligible for an electronic waste recovery payment or an electronic waste recycling payment under Section 42479.

SEC. 6. Section 42479 of the Public Resources Code is repealed.

SEC. 7. Section 42479 is added to the Public Resources Code, to read:

42479. (a) (1) For covered electronic waste collected for recycling on and after January 1, 2005, the Department of Resources Recycling and Recovery shall make electronic waste recovery payments and electronic waste recycling payments for the collection and recycling of covered e-waste to an authorized collector or covered e-waste recycler, respectively, upon completion of the review by the Department of Resources Recycling and Recovery of a payment claim submitted to the Department of Resources Recycling and Recovery by the authorized collector or e-waste recycler in the form and manner determined by the Department of Resources Recycling and Recovery. The Department of Resources Recycling and Recovery may examine a payment claim for a period of not more than 90 days from the date of receipt of the payment claim to validate the claim's completeness, accuracy, truthfulness, and compliance with applicable laws and regulations. All of the following shall be considered official records for purposes of Section 1280 of the Evidence Code:

(A) The results of a payment claim review or subsequent payment claim audit.

(B) Written information compiled by the Department of Resources Recycling and Recovery during a claim review or subsequent claim audit.

(2) To the extent authorized by Section 42477, a covered e-waste recycler shall make the electronic waste recovery payments to an authorized collector upon receipt of a completed and verified invoice submitted to the recycler by the authorized collector in the form and manner determined by the Department of Resources Recycling and Recovery.

(b) A covered e-waste recycler is eligible for a payment pursuant to this section only if the covered e-waste recycler meets all of the following requirements:

(1) The covered e-waste recycler is in compliance with applicable requirements of Article 6 (commencing with Section 66273.70) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations.

(2) The covered e-waste recycler demonstrates to the Department of Resources Recycling and Recovery that a facility utilized by the covered e-waste recycler for the handling, processing, refurbishment, or recycling of covered electronic devices meets all of the following standards:

(A) The facility has been inspected by the department within the past 12 months and had been found to be operating in conformance with all applicable laws, regulations, and ordinances.

(B) The facility is accessible during normal business hours for unannounced inspections by state or local agencies.

(C) The facility has health and safety, employee training, and environmental compliance plans and certifies compliance with the plans.

(D) The facility meets or exceeds the standards specified in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of, Division 4 (commencing with Section 3200) of, and Division 5 (commencing with Section 6300) of, the Labor Code or, if all or part of the work is to be performed in another state, the equivalent requirements of that state.

(c) The Department of Resources Recycling and Recovery may conduct a selective audit of authorized collectors, covered e-waste recyclers, or manufacturers receiving payments from the Department of Resources Recycling and Recovery to determine whether electronic waste recovery payments, electronic waste recycling payments, or payments to manufacturers are being paid by the Department of Resources Recycling and Recovery according to the requirements of this chapter and the regulations adopted pursuant to this chapter. The Department of Resources Recycling and Recovery may collect and recover from authorized collectors, covered e-waste recyclers, or manufacturers, with interest, any moneys improperly paid.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.